

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
By: REBECCA C. MARTIN  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES ex rel. CRAIG LOVE :  
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 :  
 Plaintiff, :  
 :  
 :  
 v. :  
 :  
 :  
 COLUMBIA UNIVERSITY IN THE CITY OF :  
 NEW YORK; COLUMBIA UNIVERSITY :  
 MEDICAL CENTER; MAILMAN SCHOOL OF :  
 PUBLIC HEALTH; and INTERNATIONAL :  
 CENTER FOR AIDS CARE AND TREATMENT :  
 PROGRAM :  
 :  
 :  
 Defendants. :  
-----X

-----X  
UNITED STATES OF AMERICA : 11 Civ. 4353 (LGS)  
 :  
 :  
 Plaintiff, :  
 :  
 :  
 v. :  
 :  
 :  
 THE TRUSTEES OF COLUMBIA UNIVERSITY :  
 IN THE CITY OF NEW YORK; and ICAP (fka) :  
 INTERNATIONAL CENTER FOR AIDS CARE :  
 AND TREATMENT PROGRAMS :  
 :  
 :  
 Defendants. :  
-----X

**STIPULATION AND ORDER OF  
SETTLEMENT AND DISMISSAL**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the “Stipulation”) is entered into by and among plaintiff the United States of America (the “United States”), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and defendants The Trustees of Columbia University in the City of New York, Columbia University Medical Center, Columbia University Mailman School of Public Health, and ICAP (fka) International Center for Aids Care and Treatment Programs (collectively, “Columbia”), through their respective authorized representatives;

WHEREAS, in June 2011, Craig Love (“Relator,” and, together with the United States and Columbia, the “Settling Parties”) filed a sealed *qui tam* action (the “Action”) in the United States District Court for the Southern District of New York (the “Court”) pursuant to 31 U.S.C. § 3730(b), the *qui tam* provision of the False Claims Act, 31 U.S.C. § 3729 *et seq.* (the “FCA”), alleging, *inter alia*, that Columbia violated the FCA in connection with certain federal grants obtained by Columbia;

WHEREAS, on October 7, 2014, the United States intervened in the Action against Columbia;

WHEREAS, the United States’ Complaint-in-Intervention alleges that from 2004 to 2012 (the “Covered Period”), The Trustees of Columbia University in the City of New York, as the grant administrator on behalf of ICAP, received millions of dollars in federal grants (identified in Exhibit A to this Stipulation and referred to as the “Covered Awards”) and, as required by the rules applicable to such grants, did not always use a suitable means of verifying that the allocation of the salaries of New York City ICAP employees who did not sign and certify the accuracy of their own effort reports to the Covered Awards during the Covered Period was based on the employees’ actual effort for the Covered Award (as set forth more fully in the Complaint-

In-Intervention, the “Covered Conduct”), resulting in violations of the FCA;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Columbia consents to this Court’s exercise of personal jurisdiction over Columbia.

2. Columbia admits and acknowledges the following facts:

In 2004, the Columbia University Mailman School of Public Health established the International Center for AIDS Care and Treatment Programs (“ICAP”). ICAP provides support and services for HIV prevention and treatment at approximately 740 healthcare facilities worldwide, and maintains offices in New York City.

From 2004 to 2012, Columbia University, as the grant administrator on behalf of ICAP, received millions of dollars in federal grants through various agreements (the “sponsored agreements”) with the Department of Health and Human Services (“HHS”). During this time period, ICAP received funding from three HHS operating divisions – the Centers for Disease Control and Prevention (“CDC”), the National Institutes of Health (“NIH”), and the Health Resources and Services Administration (“HRSA”). ICAP also received funding from U.S. Agency for International Development during this timeframe.

Each of ICAP’s sponsored agreements was subject to Office of Management and Budget Circular A-21 (the “Circular”).

The Circular establishes principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.

Under the Circular, when employees’ salaries and wages are applicable to more than one sponsored agreement or other cost objective, ICAP must apportion the salaries and wages by using methods meeting the criteria set forth in subsection J.10.b(2) of the Circular. The Circular lists examples of acceptable methods by which to apportion such salaries and wages, including the Plan Confirmation system used by ICAP.

Among other things, the Plan Confirmation system must reflect activities applicable to each sponsored agreement and requires that there be a suitable means of verifying that the work applicable to a sponsored agreement was performed.

From 2004 to 2012, ICAP allocated the salaries and wages of certain of its New York City employees among various Federal, and non-Federal sponsored agreements and institutional activities without using a suitable means of verifying whether the salary and wage charges that ICAP applied to specific sponsored agreements were based on an employee’s actual effort for that agreement. As a result, certain effort reports contained inaccurate information and for a number

of years, ICAP mischarged certain sponsored agreements for work that was not allocable to those agreements.

3. In settlement of the United States' claims against Columbia in this action, Columbia shall pay to the United States no later than ten (10) business days of the Effective Date, as defined below, the sum of nine million twenty thousand and seventy-three dollars and four cents (\$9,020,073.04) (the "Settlement Amount") by electronic funds transfer in accordance with written instructions to be provided by the United States.

4. Subject to the exceptions in Paragraph 5 below (concerning excluded claims), conditioned upon Columbia's timely payments of the full Settlement Amount pursuant to paragraph 3, the United States, on behalf of itself, its officers, agencies and departments, releases Columbia, and all of its current and former officers, directors, employees, servants, assigns, attorneys and agents from any civil or administrative monetary claim the United States has under the FCA; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law or equitable theories of breach of contract, payment by mistake, unjust enrichment, and fraud, related to the Covered Conduct in connection with the grants set forth on Exhibit A to this Stipulation.

5. Notwithstanding the release given in Paragraph 4 of this Stipulation, or any other term of this Stipulation, the following claims of the United States are specifically reserved and are not released by this Stipulation:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as expressly stated in this Stipulation, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than

the Covered Conduct; and

- e. Any liability based on obligations created by this Stipulation.

6. Columbia waives and shall not assert any defenses it may have to any federal criminal prosecution or federal administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such federal criminal prosecution or federal administrative action. Nothing in this paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

7. Columbia fully and finally releases the United States, and its agencies, officers, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Columbia has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. In consideration of (i) execution of this Stipulation by the Relator and (ii) the Relator's releases as set forth in paragraph 9 below, Columbia and all of its current and former officers, directors, employees, assigns, attorneys, and agents, on behalf of themselves and their heirs, attorneys, agents, successors, and assigns, release the Relator, his heirs, attorneys, agents, successors, and assigns, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Columbia has against the Relator related to the Relator's allegations in this Action; provided, however, that nothing in this Stipulation shall be deemed to preclude in any way Columbia and all of its current and former officers, directors, employees,

assigns, attorneys, and agents from denying, contesting and/or defending against Relator's claims for, or release Relator for, (a) reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d), or (b) retaliation under 31 U.S.C. § 3730(h).

9. Conditioned upon Columbia's full payment of the Settlement Amount, the Relator, for himself and his heirs, successors, attorneys, agents, and assigns, releases Columbia and all of its current and former officers, directors, employees, assigns, attorneys, and agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that the Relator has against Columbia related to the Relator's allegations in this Action; provided, however, that nothing in this Stipulation shall preclude Relator from seeking to recover his reasonable expenses and attorneys' fees and costs from Columbia pursuant to 31 U.S.C. § 3730(d) or be deemed to have released his claims under 31 U.S.C. § 3730(d) for such reasonable expenses and attorneys' fees and costs; and nothing in this Stipulation shall preclude the Relator from seeking to recover on his retaliation claim under 31 U.S.C. § 3730(h) now pending in the Action or be deemed to have released such claim. All claims in the Action not specifically reserved are released by this Stipulation.

10. The Relator shall not object to this Stipulation but agrees and confirms, pursuant to 31 U.S.C. § 3730(c)(2)(B), that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances.

11. Columbia shall be in default of this Stipulation if it fails to make the payment set forth in Paragraph 3, in whole or in part, on or before the due date for such payment. The United States will provide written notice of any default, to be sent by e-mail and first-class mail to one or more of the counsel for Columbia identified in Paragraph 18. In the event of default, the entire remaining unpaid balance of the Settlement Amount shall be immediately due and

payable by Columbia, and interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of the notice of default. If the Settlement Amount, with all accrued interest, is not paid in full within seven (7) business days following delivery of the notice of default, Columbia shall agree to entry of a Consent Judgment in favor of the United States against Columbia in the amount of the unpaid balance, and the United States, at its option, may (a) rescind this Stipulation and reinstate the claims asserted against Columbia in its Amended Complaint-in-Intervention in this Action; (b) seek specific performance of the Stipulation; (c) offset the remaining unpaid balance from any amounts due and owing Columbia at the time of default by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. Columbia shall not contest any offset imposed or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any Federal or State court. In addition, Columbia shall pay the United States all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses. In the event that the United States opts to rescind this Stipulation, Columbia shall not plead, argue, or otherwise raise any defense under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct.

12. Columbia agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in, the terms and conditions of the awards and the applicable cost principles set forth in 45 C.F.R. Part 74 and 42 C.F.R. Part 52) incurred by or on behalf of Columbia, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Stipulation;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Stipulation;
- (3) Columbia's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Stipulation (including attorney's fees);
- (4) the negotiation and performance of this Stipulation;
- (5) the payment Columbia makes to the United States pursuant to this Stipulation and any payments that Columbia may make to Relator, including costs and attorneys' fees, are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Columbia, and Columbia shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Columbia shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Columbia or any of its subsidiaries or affiliates from the United States. Columbia agrees that the United States, at a minimum, shall be entitled to recoup from Columbia any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Columbia's books



and records and to disagree with any calculations submitted by Columbia or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Columbia, or the effect of any such Unallowable Costs on the amount of such payments.

13. Except as expressly provided to the contrary in this Stipulation, this Stipulation is intended to be for the benefit of the Settling Parties only. The Settling Parties do not release any claims against any other person or entity.

14. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, it shall be deemed to have been drafted by the Settling Parties, and shall not, therefore, be construed against any Settling Party for that reason in any subsequent dispute.

15. Each of the Settling Parties shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude Relator from seeking to recover his expenses or attorney's fees and costs from Columbia, pursuant to 31 U.S.C. § 3730(d).

16. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and entities indicated below.

17. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

18. Any notice pursuant to this Stipulation shall be in writing and shall, unless

expressly provided otherwise herein, be delivered by express courier and by e-mail transmission, followed by postage-prepaid mail, to the following representatives:

TO THE UNITED STATES:

Rebecca C. Martin  
Assistant United States Attorneys  
Southern District of New York  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, NY 10007  
[rebecca.Martin@usdoj.gov](mailto:rebecca.Martin@usdoj.gov)

TO THE RELATOR:

Daniel C. Oliverio  
Hodgson Russ LLP  
1540 Broadway, 24th Floor  
New York, New York 10036  
[doliveri@hodgsonruss.com](mailto:doliveri@hodgsonruss.com)

TO COLUMBIA:

Michael J. Vernick  
Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
[michael.vernick@hoganlovells.com](mailto:michael.vernick@hoganlovells.com)

19. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").

20. This Stipulation constitutes the complete agreement between the Settling Parties. This Stipulation may not be amended except by written consent of the Settling Parties.

For the United States:

Dated: October \_\_, 2014

PREET BHARARA  
United States Attorney

By: \_\_\_\_\_  
REBECCA C. MARTIN  
Assistant United States Attorney  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For Columbia:

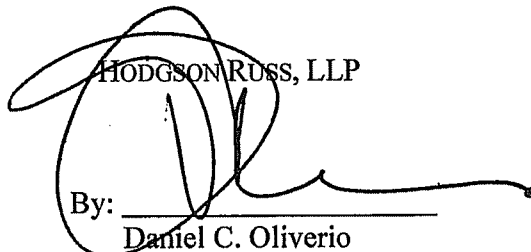
Dated: October \_\_, 2014

HOGAN LOVELLS US LLP

By: \_\_\_\_\_  
MICHAEL J. VERNICK  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004

For the Relator:

Dated: October 7, 2014

HODGSON RUSS, LLP  
  
By: \_\_\_\_\_  
Daniel C. Oliverio  
1540 Broadway, 24th Floor  
New York, New York 10036

\_\_\_\_\_  
CRAIG LOVE

SO ORDERED:

\_\_\_\_\_  
LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE

Exhibit A to Stipulation\*

Awarding Agency	Grant Number
HHS/CDC	5 U62 CCU223540
HHS/CDC	5 U62 PS223540
HHS/CDC	5 U62 PS223540
HHS/CDC	5 U62 PS223540
HHS	5 U62 PS222407
HHS/CDC	5 U62 PS223540
HHS/CDC	1 U62/CCU223540
HHS/NIH	NIAID AI069466
HHS/NIH	5 U01 AI069466
HHS/NIH	DVAMC CU00-0110
HHS/NIH	5 U01 AI069466
HHS/NIH	5 U01 AI069466
HHS/CDC	CDC 200200100076/001
HHS	5 U62 PS222407
HHS/NIH	5 U01 AI048016
HHS/NIH	5 U01 AI069466
HHS/HRSA	4 U20 HA06172-05
HHS/HRSA	6 U92 HA12772
HHS/CDC	3 U2G PS002005
HHS/NIH	NYAMED CU08-7922
HHS/CDC	CDC PS001314
HHS/CDC	CDC20020010007641287
HHS/NIH	FHI 659-2
HHS/NIH	5 R01 MH089831
HHS	TULANE CU08-9856
HHS/HRSA	6 U92 HA12772
HHS/CDC	CDC2002001000760013
HHS/NIH	1 U01 AI069466
HHS/CDC	NYAMED CU08-7923
HHS/CDC	3 U2G PS002011
HHS/CDC	CDC 200-2007-23654
HHS/CDC	1 U2G PS001423
HHS/CDC	1 U2G PS002011
HHS/CDC	1 U2G PS001987
HHS/CDC	UMDNJ CU00-0713
HHS/CDC	CDC PS001314
HHS/CDC	CDC20020010007663568
HHS/CDC	5 U2G PS001423
HHS/CDC	CDC20020010007663478
HHS/CDC	1 U2G PS002005
HHS/CDC	CDC PS001314
HHS/CDC	5 U2G PS001537
HHS/NIH	INDU IN-4685211-CU
HHS/CDC	5 B02 CDC 200-2003-0 S1

HHS/CDC	CDC PS001161
HHS/CDC	1 U2G PS001539
HHS/CDC	1 U2G PS001537
HHS/CDC	5 U2G PS001423
HHS/NIH	5 R01 AI083038
HHS/CDC	3 U2G PS001526
HHS/CDC	CDC PS001161
HHS/CDC	CDC PS001998
HHS/NIH	SSS BRS-IMPCT-Q-06-0
HHS/CDC	1 U2G PS001161
HHS/CDC	5 U2G PS001521
HHS	5 U48 DP001916
HHS/CDC	5 U2G PS001534
HHS/NIH	INDU IUPUI-4687916-C
HHS/HRSA	6 U92 HA12772
HHS/CDC	CDC PS000950
HHS/CDC	CDC PS000950
HHS/CDC	1 U2G PS002828
HHS/CDC	5 U2G PS001521
HHS/CDC	1 U2G PS001521
HHS/CDC	CDC PS001161
HHS	JHPIEGO 10-AWD-003
HHS/CDC	CDC PS000950
HHS/CDC	1 U2G PS003031
HHS	VOXIVA VOX-ICAP
HHS/CDC	CDC PS001060
HHS/NIH	INDU CU52257202
HHS/CDC	1 U2G PS002756
HHS/NIH	SRFMH 903-1318W
HHS/CDC	CDC PS001060
HHS/CDC	3 U2G PS003074
HHS/CDC	1 U2G PS001534
HHS/CDC	NEP+ CU10-1544
HHS/NIH	FHI 822/0080.0067
HHS/CDC	1 U2G PS003089
HHS/NIH	1 R01 DA032100
USAID	AID 663-A-00-08-0043

\* This Exhibit A to the Stipulation and Order of Settlement and Dismissal (the "Stipulation") lists the Federal Award Identification Number ("FAIN"), or award number assigned by the prime awardee in the case of subawards, (collectively, the "Covered Awards"). The absence of a two-digit suffix identifying a particular project period of a multi-year award, and sometimes appended to the FAIN, or any other identifier, shall not limit the release set forth in paragraphs 4 and 9 of the Stipulation.

20. This Stipulation constitutes the complete agreement between the Settling Parties. This Stipulation may not be amended except by written consent of the Settling Parties.

For the United States:

Dated: October 7, 2014

PREET BHARARA  
United States Attorney

By: 

REBECCA C. MARTIN  
Assistant United States Attorney  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For Columbia:

Dated: October 7, 2014

HOGAN LOVELLS US LLP

By: 

MICHAEL J. VERNICK  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004

For the Relator:

Dated: October \_\_, 2014

HODGSON RUSS, LLP

By: \_\_\_\_\_

Daniel C. Oliverio  
1540 Broadway, 24th Floor  
New York, New York 10036

\_\_\_\_\_  
CRAIG LOVE

SO ORDERED:

\_\_\_\_\_  
LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE

20. This Stipulation constitutes the complete agreement between the Settling Parties. This Stipulation may not be amended except by written consent of the Settling Parties.

For the United States:

Dated: October \_\_, 2014

PREET BHARARA  
United States Attorney

By: \_\_\_\_\_  
REBECCA C. MARTIN  
Assistant United States Attorney  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

For Columbia:

Dated: October \_\_, 2014

HOGAN LOVELLS US LLP

By: \_\_\_\_\_  
MICHAEL J. VERNICK  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004

For the Relator:

Dated: October 7, 2014

HODGSON RUSS, LLP

By: \_\_\_\_\_  
Daniel C. Oliverio  
1540 Broadway, 24th Floor  
New York, New York 10036

Craig W. Love  
CRAIG LOVE

SO ORDERED:

\_\_\_\_\_  
LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE